

OIA-2018-3363

17 January 2019

Dear

I refer to your request of 28 November 2018, under the Official Information Act 1982 (OIA), for the following:

The "105 issues" document released recently by NZDF states that the person shot by an NZDF sniper was "PID by the team as an older male with a beard who was described as living rough".

1. *Is this description (an older male with a beard who was described as "living rough", the [person] shot by an NZSAS sniper) contained in any of the 22 post-operation documents listed on the final page of the Op Burnham Information Pack? If so, which ones? If not, what are the titles of the documents where it is stated?*

This particular description is not included in any of the listed 22 post-operation documents. This description was part of a verbal account given by NZSAS personnel, in response to a verbal request for information from the drafters of the '105 issues' document.

To provide answers to further questions on this matter would require interviewing such personnel who are likely to be called as witnesses by the Government Inquiry into Operation Burnham and Related Matters ('the Inquiry'). To compel these individuals to give their account of events in response to an information request, would be prejudicial when the Inquiry will be examining such evidence. Therefore, any further information requested may be withheld under section 6(c) of the OIA, as making this information available could be prejudicial to the maintenance of the law.

2. *Did this description come from the NZSAS personnel or the Apache crew?*

I refer you to the response to item 1 above.

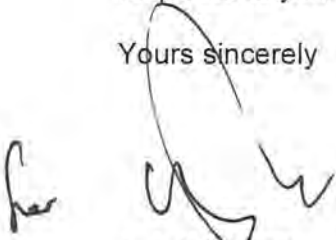
3. *Now that the SIO has reviewed all the documentation while preparing the Narrative, was the person shot by an NZDF sniper an older male with a beard who was described as "living rough"?*

This question seeks comment from the New Zealand Defence Force (NZDF) regarding an engagement which is to be examined by the Inquiry. Providing an answer to this question would require the NZDF to provide evidence about the engagement, which will inform the Inquiry's investigation into compliance with legal rules and standards, including international humanitarian law and the Rules of Engagement. The NZDF has received prior guidance from the Chief Ombudsman on the application of section 6(c) of the OIA. Based on this, the information requested is withheld under section 6(c), as the premature release of this information, which the NZDF will provide to the Inquiry, would be likely to undermine or

prejudice the Inquiry's own investigative processes or ability to make its findings on this matter.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review my response to your request.

Yours sincerely

A handwritten signature in black ink, appearing to be 'A.J. Woods', written over a large, faint circular stamp or watermark.

A.J. WOODS
Air Commodore
Chief of Staff HQNZDF